REMARKS/ARGUMENTS

The Applicants have carefully considered this application in connection with the Examiner's Action and respectfully request reconsideration of this application in view of the following remarks.

The Applicants originally submitted Claims 1-10 in the application. Previously, the Applicants elected Claims 1-8 and withdrew Claims 9-10. The Examiner then issued a Species Election and the Applicants elected Claims 1-3 and 5-7 and withdrew Claims 4 and 8. Presently, the Applicants have amended Claim 5, and otherwise have not amended, canceled or added any other claims. Accordingly, Claims 1-3 and 5-7 are currently pending in the application.

I. Rejection of Claims 1-3 and 5-6 under 35 U.S.C. §112, first paragraph

The Examiner has rejected Claims 1-3 and 5-6 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for the claims subject matter being drawn to a battery, does not reasonably provide enablement for the claims drawn to only an apparatus. The Applicants appreciate the Examiner's acknowledgement that the as-filed specification provides enablement for claims directed to a battery. However, the Applicants suggest that the Examiner is mistaken in arguing that the same specification that admittedly provides enablement for claims directed to a battery is lacking when those claims are directed to an apparatus. As the Examiner is aware, a battery is just one form of an apparatus. As the Examiner is equally aware, the Applicants need not provide enablement in the application for every single implementation of a claimed invention, but just need to provide enablement for at least one implementation. Accordingly, as a

battery is an apparatus, and the Examiner has admitted that the battery is enabled, the apparatus must equally be enabled. Accordingly, the Applicants respectfully request the Examiner to withdraw the §112, first paragraph rejection of Claims 1-3 and 5-6 and allow issuance thereof.

II. Rejection of Claim 5 under 35 U.S.C. §112, second paragraph

The Examiner has rejected Claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In response, the Applicants have amended Claim 5 to comply with 35 U.S.C. §112, second paragraph. Accordingly, the Applicants respectfully request the Examiner to withdraw the §112, second paragraph rejection of Claim 5 and allow issuance thereof.

III. Double Patenting Rejection

The Examiner asserts a non-statutory double patenting rejection against Claims 1-3 and 5-7, based on Claim 1-11 of the patent number 7,227,235 ('235 patent). The Examiner has indicated that while the conflicting claims are not identical to the claims of the '235 Patent, they are not patentably distinct from each other. The Applicants disagree with the Examiner's nonstatutory obviousness-type double patenting rejection of the pending case, as argued below.

The Federal Circuit and its predecessor, the United States Court of Customs and Patent Appeals, recognized the need to fashion a doctrine of nonstatutory double patenting (also known as "obviousness-type" double patenting) to prevent the issuance of a patent on claims that are nearly identical to or simply an obvious extension of claims in an earlier patent. *Geneva, et al. v.*

Glaxosmithkline PLC, et al., 349 F.3d 1373, 1377-78 (Fed. Cir. 2003). This doctrine was derived, based upon public policy, to prevent an Applicant from extending patent protection for an invention beyond the statutory term of an earlier-issued patent by claiming only a slight variant of the earlier patent. *Id.*

Per MPEP §2701, for applications filed on or after June 8, 1995, the term of a patent (other than a design patent) begins on the date the patent issues and ends on the date that is twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under 35 U.S.C. 120, 121, or 365(c), twenty years from the filing date of the earliest of such application(s). Both the instant case and the cited '253 Patent are based upon applications with a filing date of November 18, 2003 (after June 8, 1995) and thus both have the same statutory term date (e.g., November 18, 2023). As both the instant case and the '253 Patent have the exact same statutory term date, a nonstatutory obviousness-type double patenting rejection is improper in the instant case - the policy reasons for issuing a nonstatutory obviousness-type double patenting rejection are missing. Accordingly, the Applicants request the Examiner to withdraw the nonstatutory obviousness-type double patenting rejection of Claims 1-3 and 5-7 and allow issuance thereof.

IV. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-3 and 5-7.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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